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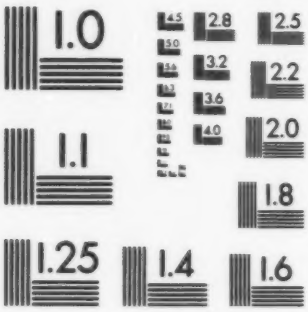


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Province of
British Columbia

1989

# Report on
# Loss Appraisal under the *Insurance Act*

## LAW REFORM COMMISSION OF BRITISH COLUMBIA

MINISTRY OF ATTORNEY GENERAL

# LAW REFORM COMMISSION OF BRITISH COLUMBIA

# LOSS APPRAISAL UNDER THE INSURANCE ACT

## (MINOR REPORT)

LRC 107

July, 1989

89-05854/

The Law Reform Commission of British Columbia was established by the *Law Reform Commission Act* in 1969 and began functioning in 1970.

The Commissioners are:

ARTHUR L. CLOSE, *Chairman*

HON. RONALD I. CHEFFINS, Q.C., *Vice-Chairman*

MARY V. NEWBURY

LYMAN R. ROBINSON, Q.C.

PETER T. BURNS, Q.C.

Thomas G. Anderson is Counsel to the Commission.

Sharon St. Michael is Secretary to the Commission.

Linda Grant provides text processing and technical copy preparation.

The Commission offices are located at Suite 601, Chancery Place, 865 Hornby St., Vancouver, B.C. V6Z 2G3.

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TO THE HONOURABLE BUD SMITH, Q.C.
ATTORNEY GENERAL OF THE PROVINCE OF BRITISH COLUMBIA:

Dear Mr. Attorney:

Re: Loss Appraisal under the *Insurance Act*
(Minor Report, LRC 107)

The Justice Reform Committee in its Report, *Access to Justice*, identified a number of issues arising under provincial statutes which called for further study. On the recommendation of the Committee, you referred four of these issues to the Law Reform Commission for that purpose.

One issue involves the application of the statutory appraisal procedures provided in the *Insurance Act* to business interruption losses. Our research has revealed that the application of the appraisal procedure is uneven and, in some respects, uncertain. It requires rationalization. In the appended Report recommendations are made which would result in the appraisal process being used with respect to a wider range of losses, including losses for business interruption.

Yours sincerely,

A Close

Arthur L. Close
Chairman

July 20, 1989

## LOSS APPRAISAL UNDER THE *INSURANCE ACT*

## (MINOR REPORT)

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## LOSS APPRAISAL UNDER THE *INSURANCE ACT*

### A. Alternate Dispute Resolution and Insurance Appraisals

The past few years have seen an increasing recognition of the limitations of ordinary civil litigation as a means of resolving and adjudicating upon disputes. Crowded trial lists, and considerations of expense and delay all make litigation unattractive. This has led to a search for alternative mechanisms, strategies and institutions which will serve the same ends as litigation but without many of its disadvantages. These alternatives are usually referred to collectively as "Alternate Dispute Resolution," or, simply, "ADR."

There can be little doubt that promoting the creation, and encouraging the use, of ADR has become part of the public policy of the Province. For example, the past five years have seen the establishment of a Centre for International Commercial Arbitration in Vancouver and the enactment of modern arbitration legislation[1] to complement its existence. Recent legislation has taken certain classes of landlord-tenant dispute out of Provincial Court to be dealt with through the arbitration facilities of the Residential Tenancy Branch of the Ministry of Labour and Consumer Services.[2] Finally, the terms of reference of the Justice Reform Committee, which was constituted in 1988 to report on ways of improving the administration of justice, provided:[3]

> ALTERNATE DISPUTE RESOLUTION: The committee's goal is to make recommendations that will extend the use and utility of alternate dispute resolution procedures including arbitration and mediation, both within the context of the litigation process and outside of and separate from it.

One form of ADR which has been in existence for many years, but which has attracted relatively little notice, is the appraisal procedure provided by the *Insurance Act*.[4]

A common form of insurance is a policy under which the insurer agrees to indemnify the insured (the policyholder) for some or all losses which the insured may suffer on the occurrence of a specified event which causes damage to property. Fire insurance is probably the most familiar example of this

---

1. *Commercial Arbitration Act*, S.B.C. 1986, c. 3; *International Commercial Arbitration Act*, S.B.C. 1986, c. 14.
2. *Residential Tenancy Amendment Act*, S.B.C 1989, c. 60.
3. *See Access to Justice: The Report of the Justice Reform Committee*, 1988.
4. R.S.B.C. 1979, c. 200.

kind of "disaster" insurance although one can insure against a variety of other perils. Insurance is essentially a matter of contract; thus the parties are, within limits,[5] free to define the extent and nature of the insurance coverage as they see fit. The insurer's obligation is defined by the policy. It may be limited simply to replacing or compensating for the value of damaged property. If the insurance policy so provides, the insurer may also be liable for business interruption losses flowing from the same occurrence.

The insurer and insured are usually able to agree on the value of the loss, but that is not always the case. When they cannot agree, there is a need for some way to achieve an authoritative valuation. The traditional mechanism is civil litigation, but the *Insurance Act* contains an alternative in the form of a statutory appraisal. Section 11 provides:

> **Appraisals**
>
> 11. (1) This section applies to a contract containing a condition, statutory or otherwise, providing for an appraisal to determine specified matters in the event of a disagreement between the insured and the insurer.
>
> (2) The insured and the insurer shall each appoint an appraiser, and the 2 appraisers appointed shall appoint an umpire.
>
> (3) The appraisers shall determine the matters in disagreement and, if they fail to agree, they shall submit their differences to the umpire, and the finding in writing of any 2 determines the matters.
>
> (4) Each party to the appraisal shall pay the appraiser appointed by him and shall bear equally the expense of the appraisal and the umpire.
>
> (5) Where
>
> (a) a party fails to appoint an appraiser within 7 clear days after being served with written notice to do so;
>
> (b) the appraisers fail to agree on an umpire within 15 days after their appointment; or
>
> (c) an appraiser or umpire refuses to act or is incapable of acting or dies,
>
> the County Court of the county in which the appraisal is to be made may appoint an appraiser or umpire, as the case may be, on the application of the insured or of the insurer.[6]

---

5. The *Insurance Act* sets out "statutory conditions" for various types of insurance which are deemed to be part of every policy of that type and which cannot be varied by the parties.

6. The *Supreme Court Act*, S.B.C. 1989, c. 40, s. 18, provides for the merger of the Supreme and County courts. When it comes fully into force "County Court" shall be read as "Supreme Court" in s. 11.

Section 11 is triggered by a condition in an insurance policy which provides for an appraisal. Such a condition may be one which was included in the policy as a result of an agreement of the parties, or it may be a "statutory condition" which is part of the policy whether the parties have agreed to it or not.

The only statutory condition which is relevant in this context arises under section 220:

> **Effect of statutory conditions**
>
> **220.** (1) The conditions set forth in this section shall be deemed to be part of every contract in force in the Province, and shall be printed on every policy with the heading "Statutory Conditions", and no variation or omission of or addition to any statutory condition shall be binding on the insured.
>
> ...
>
> Appraisal
>
> 11. In the event of disagreement as to the value of the property insured, the property saved, or the amount of the loss, those questions shall be determined by appraisal as provided under the *Insurance Act* before there can be any recovery under this contract, whether the right to recover on the contract is disputed or not, and independently of all other questions; but there shall be no right to an appraisal until a specific demand therefor is made in writing and until after proof of loss has been delivered.

Despite the broad language of section 220(1), this statutory condition applies only to insurance contracts governed by Part 6 of the Act.[7] Part 6 is concerned solely with fire insurance.[8]

## B. The Scope of the Statutory Appraisal Procedure

### 1. Business Interruption Losses

The mandate of the Justice Reform Committee to consider alternate dispute resolution elicited a submission directed at the appraisal procedure set out in the *Insurance Act*. This submission, after referring to Statutory Condition No. 11, observed:

---

7. *See* s. 213.
8. For a detailed discussion of the appraisal procedure *see*: W.H. Holburn, "Appraisals," (1987) 5:2 Can. J. Ins. L. 20; G.R. Schmitt, "Appraisals Under the B.C. Insurance Act," (1985) 43 Adv. 217 (Schmitt No. 1); G.R. Schmitt, "Appraisals Under the B.C. Insurance Act Part 2," (1986) 44 Adv. 19 (Schmitt No. 2).

> I have found this to be a useful and quick way to resolve disputes in first party insurance claims, (normally fires to premises). However, recently, several cases I have been involved in have said this does not apply to Business Interruption and loss of rents policies.
>
> Business Interruption is one of the hardest areas of insurance to achieve agreement. Not having the appraisal [procedure] apply to Business Interruption claims prevents quick and fair settlements of claims. This puts the burden of settlement on the Courts which is costly and time consuming.

The Justice Reform Committee recommended that this issue be referred to the Law Reform Commission for further study.

The author of the submission quoted above is quite correct as to the status of business interruption losses. Their exclusion from the appraisal procedure is a result of section 213 of the *Insurance Act* which defines the scope of Part 6:

> **213.** This Part applies to ... contracts of fire insurance ... except:
>
> ...
>
> (b) where the subject matter of the contract of insurance is rents, charges or loss of profits;

The reference to "loss of profits" has been held to encompass business interruption losses. Thus fire insurance policies, to the extent that they insure against business interruption losses, are excluded from Part 6 and the statutory conditions provided by section 220 do not apply. These losses are, therefore, outside the statutory appraisal procedure.[9] This is so notwithstanding that the statutory conditions, including condition no. 11, are deemed to be part of the insurance policy and will be printed on its face.

### 2. Perils Other Than Fire

The way in which section 213 limits the availability of the appraisal procedure has a further implication. Destruction by fire is only one of a number of perils against which the owner of property may wish to insure.[10] Some idea of the other hazards against which insurance might be arranged is found in section 214:

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9. *Ivy Green Restaurant Ltd. et al.* v. *Gerling Global General Insurance Co. et al.*, (1985) 14 C.C.L.I. 290 (B.C.Co.Ct.); *Re Kits Enterprises Ltd*; *Peat Marwick Ltd. and Bank of Montreal* v. *Travelers Indemnity Company of Canada*, (1987) 16 B.C.L.R. (2d) 267(Co.Ct.); *British Columbia Insurance Corporation* v. *Dawd Holdings Ltd.*, (1988) 12 A.C.W.S. (3d) 381 (B.C.S.C.).

10. The definition section of the *Insurance Act* recognizes boiler insurance, earthquake insurance, explosion insurance, civil commotion insurance, falling aircraft insurance, sprinkler leakage insurance, weather insurance, and windstorm insurance. *See* s. 1.

> **214.** (1) Every insurer licensed to carry on fire insurance may, subject to its Act of incorporation and subject to the restrictions specified in the licence, insure or reinsure any property in which the insured has an insurable interest against loss or damage by fire, lightning or explosion, and may insure or reinsure the same property against loss or damage from falling aircraft, earthquake, wind storm, tornado, limited hail, sprinkler leakage, riot, malicious damage, weather, water damage, smoke damage, civil commotion and impact by vehicles, and any one or more perils falling within those other classes of insurance prescribed by the regulations.

Thus the same insurance policy, with respect to the same property, may cover not only loss through fire but loss through any of the other perils identified in section 214 that are stipulated in the policy. Will a loss sustained through one of the other perils be amenable to the appraisal procedure?

The answer to this question is not as clear as it might be. It may be argued that since fire is an included peril, the statutory conditions must be printed as part of the insurance policy. This, it has been suggested, is sufficient to trigger section 11 and make the appraisal procedure applicable to a loss caused by any kind of peril insured against.[11]

A somewhat different approach involves characterizing the policy in terms of the primary peril insured against and invoking the statutory condition if that peril is destruction by fire. There is some judicial support for this approach. In one case the New Brunswick Court of Appeal[12] considered a homeowners policy of insurance against both fire and water damage. A claim was made under the policy based on water damage and it was held that a (fire insurance) statutory condition which imposed a limitation period applied to bar the claim.

In another case,[13] the Ontario Court of Appeal considered a policy which insured against both theft and fire. The policy was characterized as "theft insurance" and for that reason the limitation period arising under the (fire insurance) statutory conditions was held not to bar a claim based on theft. That result seems reasonable, but one is tempted to speculate whether the court would have adopted the characterization ap-

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11. Schmitt No.1, *supra*, n. 8 at 224.
12. *Chiasson* v. *Century Insurance Co. of Canada*, (1978) 86 D.L.R. (3d) 342.
13. *Slijepcevic* v. *State Farm Fire & Casualty Co.*, (1979) 26 O.R.(2d) 566 (C.A.). In this case, the characterization may have been influenced by the fact that the insured was a tenant so the policy covered only chattels and not the building itself.

proach and arrived at the same result if the claim had been based on fire.[14]

The characterization approach, and the other argument for the applicability of the statutory conditions to other perils, are difficult to reconcile with the British Columbia cases concerning business interruption losses. We believe the reasoning of the latter would prevail if the question arose in this province today. There is, however, a large measure of uncertainty respecting the current law and that cannot be a desirable situation.

## C. The Need for Reform

### 1. The Appraisal Procedure Generally

The discussion above raises two questions. First, is there a need to clarify and extend the application of the statutory appraisal procedure to the valuation of losses arising out of damage to property caused by perils other than fire? Second, where the loss insured against includes rent, profits and other business interruption losses, should the valuation of the loss be subject to the appraisal procedure?

These questions raise the more basic question whether the appraisal procedure, in its current form, performs a useful function -- should its use be curtailed rather than expanded? Information on the operation and use of the appraisal procedure is not easily obtained. Little has been written on it. The procedure still has an air of obscurity about it. A difficulty seems to be that until recently it was little used -- even in cases where it would appear to be mandatory. One commentator, W.H. Holburn, has observed:[15]

> Statutory Provisions relating to appraisal have been in place for many years. However, it has really been in this decade that the appraisal process has come into its own.
>
> The reason why the appraisal process was not used earlier is difficult to ascertain with any degree of accuracy. It has been suggested by one writer on the topic that lawyers who advised the insurance industry historically believed that insurance appraisals were notoriously unreliable and unpredictable.

---

14. One commentator suggests that *Slijepcevic* and *Chiasson* are not distinguishable on their facts: *see* M.G. Baer, "Annual Survey of Canadian Law: Insurance Law," (1980) 12 Ottawa L.R. 610, at 615.
15. *Supra*, n. 8 at 20.

The writer referred to by this commentator appears to be G.R. Schmitt Q.C. who added the following gloss to the "suggestion":[16]

> On reflection, it has seemed to me that appraisers are probably no less predictable than Judges and I suspect that one reason appraisals have not been popular is that organizing an appraisal does impose some responsibility on the claims managers and lawyers involved. If the results turn out to be very bad so far as one of the parties is concerned, someone may wonder how it all came about. If you go to Court and the result is bad, you can always blame the Judge and most people will accept that as a possible explanation. If, however, an appraisal is set up and the results appear to be terrible, someone is likely to wonder how it came about that such incompetent people were allowed to become appraisers.

Holburn offered the following views on the current role and the future of the appraisal procedure:[17]

> [T]he appraisal method has become a popular method of resolving insurance disputes. Based upon what has occurred in the last five or six years and, in particular is likely to become even more popular in the future.
>
> Perhaps the perceived unreliability and unpredictability of appraisals have been overshadowed by the enormous cost and time required to resolve insurance disputes by the more traditional method of litigation in court. Certainly during the 60's and 70's, it seemed that litigation was much simpler, far less expensive, and of course the availability of judges was much higher. Now, at least in British Columbia, and other jurisdictions in Canada with which I am familiar, to resolve even the simplest of insurance disputes may cost many thousands of dollars and may take several years to reach a decision by the court.
>
> In order to avoid the expense of litigation, and in order to reach a speedy conclusion to the dispute, parties are perhaps prepared to ignore the historical perception of unreliability and unpredictability of appraisals in favor of a resolution of the dispute. As there appears to be no indication that litigation will become less expensive as the 20th century ends, and there is certainly no indication that the courts will have the judges available to resolve disputes in a speedier fashion, it appears inevitable that appraisals will become more popular. Instead of being an anomaly as it was in the 60's and 70's, it will become the norm in the 80's and 90's.
>
> ...
>
> There has been a lot of jurisprudence lately on the appraisal process. No doubt the ingenuity of counsel will cause more cases to be decided before the parameters of the appraisal process are finally known. However, what is known is that it is a quick and relatively inexpensive way to resolve quantum disputes under fire insurance policies. The appraisal process is by

16. Schmitt No. 1, *supra*, n. 8 at 219.
17. *Supra*, n. 8 at 20, 24.

no means perfect, but he speed and cost with which the dispute can be resolved outweigh the imperfections. For those reasons alone, it seems that the appraisal process is the way of the future and will become the norm in resolving insurance disputes.

The views set out above reflect our own impressions of the appraisal procedure. That impression is overwhelmingly favourable. We are, in fact, actively exploring the possibility of adopting the appraisal procedure for the resolution of disputes over valuation in relation to family property, where economic relations must be adjusted on a marriage breakdown. We have no hesitation in endorsing the retention and expansion of the appraisal procedure with respect to insured losses.

### 2. Extending The Scope Of The Appraisal Procedure

It is our conclusion that the statutory appraisal procedure should apply to the valuation of any loss covered by the *Insurance Act* which has a "property damage" flavour. It is difficult to see any rational basis for confining the procedure to fire losses. Where property is damaged through flood, tornado or an earthquake, valuing the loss is an exercise that is almost indistinguishable from valuing a fire loss. Consider the following examples:

> Case 1: The policy insures against tornado damage only and a claim is made based on tornado damage.
>
> Case 2: The policy insures against both tornado damage and fire damage. A tornado hits the insured property doing damage and starting a fire which causes further damage.
>
> Case 3: The policy insures against fire damage only. A claim is made based on fire damage.

In cases 1 and 3 it is clear whether or not the statutory appraisal procedure applies. Unfortunately they yield different answers although each loss is equally suitable for valuation through the appraisal process. Case 2 stands in a shadowy "no man's land." It is not clear whether the statutory appraisal procedure applies to a valuation of all the damage suf-

fered by the insured, none of the damage, or part of the damage.[18] The *Insurance Act* should be amended to rationalize this aspect of its operation.

Valuing business interruption loss raises slightly different considerations. It might be argued that valuing economic loss flowing from property damage is a more elusive and difficult process than valuing the damage itself and that caution is called for. We agree that different skills and qualities in an appraiser may be required when economic loss forms a large portion of an insurance claim but we do not see that as any reason to reject the appraisal procedure itself. We believe it creates an unacceptable anomaly to require that a loss based on the same occurrence be divided into two parts with one part valued through appraisal and the other through litigation. It is our conclusion that business interruption losses associated with property damage should be brought within the appraisal procedure.

## D. Recommendations

Most of the mischief and confusion as to the circumstances in which a loss must be valued through appraisal flow from the fact that mandatory appraisal has been legislated in the form of a statutory condition which attaches to fire insurance policies governed by Part 6 of the *Insurance Act*. The scope of appraisal is, therefore, determined by the scope of Part 6 which, in turn, reflects considerations far removed from the machinery of valuation. We believe the preferable approach is wholly to detach the appraisal machinery from Part 6 and give it an independent existence. This has already been done, in part, through the enactment of section 11 as a provision of general application.

The Commission recommends:

*1. Section 11(1) of the Insurance Act be repealed and a provision comparable to the following substituted:*

*11. (1) This section applies*

*(a) to an appraisal under section 11.1, and*

---

18. The characterization cases suggest an all-or-nothing answer while the business interruption loss cases suggest partial application.

*(b) to a contract containing a condition, statutory or otherwise, providing for an appraisal to determine specified matters in the event of a disagreement between the insured and the insurer.*

*2. A provision comparable to the following be added as section 11.1:*

*11.1 (1) This section applies to a contract*

*(a) of fire insurance,*

*(b) to indemnify for loss or damage resulting from any peril referred to in section 214, and*

*(c) to indemnify for loss of rent or profits, or for business interruption, resulting from a peril insured against in a contract referred to in paragraph (a) or (b)*

*(2) If the insured and insurer disagree as to the value of property insured, property saved, or the amount of loss, those questions shall be determined by appraisal as provided in section 11 before there can be any recovery under the contract, whether the right to recover on the contract is disputed or not, and independently of all other questions.*

*(3) There shall be no right to an appraisal until a specific demand is made in writing and until after proof of loss has been delivered.*

**The enactment of legislation such as that described would make statutory condition no. 11 redundant. It might be repealed, but no great harm would result from leaving it in place. It might even be beneficial since printing it in the policy is likely to bring its existence to the attention of the insured party.[19]**

**One final point should be made. Our recommendations should resolve the uncertainty respecting the application of the appraisal procedure to losses resulting from perils other than fire. The uncertainty remains respecting the application**

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19. The parties would, of course, remain free to agree to value loss through the appraisal procedure with respect to losses not governed by recommended section 11.1.

of other statutory conditions (such as the limitation period) to losses covered by a "package" policy which insures against a number of perils in addition to fire. This raises larger issues and it may be that a comprehensive review of the scope and content of Part 6 is required. This is a project which might be carried out as a collective project by the Superintendents of Insurance of the various provinces. They have a direct concern with maintaining the integrity and uniformity of Canadian insurance legislation.

## APPENDIX

## *INSURANCE ACT*, R.S.B.C. 1979, C. 200

## SELECTED PROVISIONS AND DEFINITIONS

**Interpretation**

**1.** (1) In this Act

"boiler insurance" means and includes

(a) "boiler insurance", which means insurance against liability for loss or damage to persons or property and against damage to property or loss caused by explosion of, rupture of or accident to steam boilers and pipes, engines and machinery connected with them or operated by them; and

(b) "machinery insurance", which means insurance against liability for loss or damage to persons or property and against damage to property or loss caused by breakdown of machinery;

"contract" means a contract of insurance and includes a policy, certificate, interim receipt, renewal receipt or writing evidencing the contract, whether sealed or not, and a binding oral agreement;

"court" means the Supreme Court;

"earthquake insurance" means insurance against loss of or damage to property caused by an earthquake;

"explosion insurance" means insurance against loss of or damage to the property insured caused by explosion of steam boilers and pipes and engines and machinery connected therewith, and includes

(a) "limited or inherent explosion insurance", which means insurance against loss of or damage to the property insured caused by the explosion of dust, gas or any substance, where the explosion arises out of hazards inherent in the business conducted on the premises; and

(b) "civil commotion insurance", which means insurance against loss of or damage to the property insured caused by bombardment, invasion, insurrection, mutiny, civil war or commotion, riot, act of foreign enemy, hostilities or warlike operations, whether war is declared or not, revolution, rebellion, conspiracy, usurped power or military, naval or air force operations, vandalism or malicious mischief;

"falling aircraft insurance" means insurance against loss of or damage to the property insured caused by aircraft or objects falling from aircraft;

"fire insurance" means insurance against loss of or damage to the property insured caused by fire, lightning or explosion due to ignition;

"hail insurance" means insurance against loss of or damage to property caused by hail;

"insurance" means the undertaking by one person to indemnify another person against loss or liability for loss in respect of a certain risk or peril to which the object of the insurance may be exposed, or to pay a sum of money or other thing of value on the happening of a certain event;

"insurer" means the person who undertakes, agrees or offers to undertake, a contract;

"limited hail insurance" means insurance against loss of or damage to property other than crops caused by hail;

"person" includes corporation, unincorporated society or association, partnership, any group of underwriters and a Lloyd's association;

"personal property insurance" means insurance against loss of or damage to movable or personal property;

"plate glass insurance" means insurance against loss of or damage to plate or other glass;

"policy" means the instrument evidencing a contract;

"property" includes profits, earnings and other pecuniary interests, and expenditure for rents, interest, taxes and other outgoings and charges, and in respect of inability to occupy the insured premises, but only to the extent of express provision in the contract;

"real property insurance" means insurance against loss of or damage to real or immovable property and not falling within the definitions of other classes covering property;

"sprinkler leakage insurance" means insurance against loss or damage to the property insured from water or other substance, caused by the breakage of or leakage from sprinkler equipment or other fire protection system or pumps, water pipes or plumbing and its fixtures;

"theft insurance" means insurance against loss of or damage to property caused by theft, wrongful conversion, burglary, housebreaking or robbery;

"water damage insurance" means insurance, other than sprinkler leakage or weather insurance, against loss of or damage to property caused by the escape of water from plumbing or heating equipment of a building or from outside water mains, or by the melting of ice or snow on the roof of a building;

"weather insurance" means insurance, other than hail insurance or windstorm insurance, against loss or damage caused by rain, tempest, flood or other climatic conditions;

"windstorm insurance" means insurance against loss of or damage to property caused by windstorm, cyclone or tornado.

**Application to insurers and contracts**

**2.** This Act, except as provided, applies to every insurer that carries on any business of insurance in the Province and to every contract of insurance made or deemed made in the Province.

**Appraisals**

**11.** (1) This section applies to a contract containing a condition, statutory or otherwise, providing for an appraisal to determine specified matters in the event of a disagreement between the insured and the insurer.

(2) The insured and the insurer shall each appoint an appraiser, and the 2 appraisers appointed shall appoint an umpire.

(3) The appraisers shall determine the matters in disagreement and, if they fail to agree, they shall submit their differences to the umpire, and the finding in writing of any 2 determines the matters.

(4) Each party to the appraisal shall pay the appraiser appointed by him and shall bear equally the expense of the appraisal and the umpire.

(5) Where

(a) a party fails to appoint an appraiser within 7 clear days after being served with written notice to do so;

(b) the appraisers fail to agree on an umpire within 15 days after their appointment; or

(c) an appraiser or umpire refuses to act or is incapable of acting or dies,

the County Court of the county in which the appraisal is to be made may appoint an appraiser or umpire, as the case may be, on the application of the insured or of the insurer.

**Application of Part**

**213.** This Part applies to insurers carrying on the business of fire insurance and to contracts of fire insurance, whether or not a contract includes insurance against other risks as well as the risks included in the expression "fire insurance" as defined by this Act, except

(a) contracts of insurance falling within the classes of aircraft, automobile, boiler and machinery, inland transportation, marine, plate glass, sprinkler leakage and theft insurance;

(b) where the subject matter of the contract of insurance is rents, charges or loss of profits;

(c) where the peril of fire is an incidental peril to the coverage provided; or

(d) where the subject matter of the insurance is property that is insured by an insurer or a group of insurers primarily as a nuclear risk under a policy covering against loss of or damage to the property resulting from nuclear reaction or nuclear radiation and from other perils.

**Coverage by fire insurer**

**214.** (1) Every insurer licensed to carry on fire insurance may, subject to its Act of incorporation and subject to the restrictions specified in the licence, insure or reinsure any property in which the insured has an insurable interest against loss or damage by fire, lightning or explosion, and may insure or reinsure the same property against loss or damage from falling aircraft, earthquake, wind storm, tornado, limited hail, sprinkler leakage, riot, malicious damage, weather, water damage, smoke damage, civil commotion and impact by vehicles, and any one or more perils falling within those other classes of insurance prescribed by the regulations.

(2) An insurer licensed to carry on fire insurance may insure an automobile against loss or damage under a policy falling within this Part.

**Perils insured against**

**216.** (1) Subject to subsection (4) of this section and to section 223 (a), in any contract to which this Part applies, the contract shall be deemed to cover the insured property

(a) against fire, whether resulting from explosion or otherwise, not occasioned by or happening through

(i) in the case of goods, their undergoing any process involving the application of heat;

(ii) riot, civil commotion, war, invasion, act of foreign enemy, hostilities, whether war be declared or not, civil war, rebellion, revolution, insurrection or military power;

(b) against lightning, but excluding destruction or loss to electrical devices or appliances caused by lightning or other electrical currents unless fire originates outside the article itself, and only for destruction or damage occurring from the fire;

(c) against explosion, not occasioned by or happening through any of the perils specified in paragraph (2) (ii), of natural, coal or manufactured gas in a building not forming part of a gasworks, whether fire ensues from it or not.

(2) Unless a contract to which this Part applies otherwise specifically provides, it does not cover the insured property against loss or damage caused by contamination by radioactive material, directly or indirectly, resulting from fire, lightning or explosion within the meaning of subsection (1).

(3) Where property insured under a contract covering that property at a specified location is necessarily removed to prevent loss or damage or further loss or damage to it, that part of the insurance under the contract that exceeds the amount of the insurer's liability for any loss incurred shall, for 7 days only or for the unexpired term of the contract if less than 7 days, cover the property removed and any property remaining in the original location in the proportions which the value of the property in each of the respective locations bears to the value of the property in them all.

(4) Nothing in subsection (1) precludes an insurer giving more extended insurance against the perils mentioned, but in that case this Part does not apply to the extended insurance.

(5) An insurer licensed to carry on fire insurance may include in its insurance contracts a clause or endorsement providing that, in the case of livestock insured against death or injury caused by fire or lightning, the word "lightning" is deemed to include other electrical currents.

**Effect of statutory conditions**

**220.** (1) The conditions set forth in this section shall be deemed to be part of every contract in force in the Province, and shall be printed on every policy with the heading "Statutory Conditions", and no variation or omission of or addition to any statutory condition shall be binding on the insured.

(2) In this section "policy" does not include interim receipts or binders.

## STATUTORY CONDITIONS

### Misrepresentation

1. If any person applying for insurance falsely describes the property to the prejudice of the insurer, or misrepresents or fraudulently omits to communicate any circumstance which is material to be made known to the insurer in order to enable it to judge of the risk to be undertaken, the contract shall be void as to any property in relation to which the misrepresentation or omission is material.

### Property of others

2. Unless otherwise specifically stated in the contract, the insurer is not liable for loss or damage to property owned by any person other than the insured, unless the interest of the insured therein is stated in the contract.

### Change of interest

3. The insurer shall be liable for loss or damage occurring after an authorized assignment under the Bankruptcy Act or change of title by succession, by operation of law, or by death.

### Material change

4. Any change material to the risk and within the control and knowledge of the insured shall avoid the contract as to the part affected thereby, unless the change is promptly notified in writing to the insurer or its local agent; and the insurer when so notified may return the unearned portion, if any, of the premium paid and cancel the contract, or may notify the insured in writing that, if he desires the contract to continue in force, he must, within 15 days of the receipt of the notice, pay to the insurer an additional premium; and in default of such payment the contract shall no longer be in force and the insurer shall return the unearned portion, if any, of the premium paid.

### Termination of insurance

5. (1) This contract may be terminated

(a) by the insurer giving to the insured 15 days' notice of termination by registered mail, or 5 days' written notice of termination personally delivered; or

(b) by the insured at any time on request.

(2) Where this contract is terminated by the insurer,

(a) the insurer shall refund the excess of premium actually paid by the insured over the pro rata premium for the expired time, but, in no event, shall the pro rata premium for the expired time be deemed to be less than any minimum retained premium specified; and

(b) the refund shall accompany the notice unless the premium is subject to adjustment or determination as to amount, in which case the refund shall be made as soon as practicable.

(3) Where this contract is terminated by the insured, the insurer shall refund as soon as practicable the excess of premium actually paid by the insured

over the short rate premium for the expired time, but, in no event, shall the short rate premium for the expired time be deemed to be less than any minimum retained premium specified.

(4) The refund may be made by money, postal or express company money order, or by cheque payable at par.

(5) The 15 days mentioned in clause (a) of subcondition (1) commences to run on the day following the receipt of the registered letter at the post office to which it is addressed.

**Requirements after loss**

6. (1) Upon the occurrence of any loss of or damage to the insured property, the insured shall, if such loss or damage is covered by the contract, in addition to observing the requirements of conditions 9, 10 and 11,

(a) forthwith give notice thereof in writing to the insurer;

(b) deliver as soon as practicable to the insurer a proof of loss verified by a statutory declaration,

(i) giving a complete inventory of the destroyed and damaged property and showing in detail quantities, costs, actual cash value and particulars of amount of loss claimed;

(ii) stating when and how the loss occurred, and if caused by fire or explosion due to ignition, how the fire or explosion originated, so far as the insured knows or believes;

(iii) stating that the loss did not occur through any wilful act or neglect or the procurement, means or connivance of the insured;

(iv) showing the amount of other insurances and the names of other insurers;

(v) showing the interest of the insured and of all others in the property with particulars of all liens, encumbrances and other charges upon the property;

(vi) showing any changes in title, use, occupation, location, possession or exposures of the property since the issue of the contract;

(vii) showing the place where the property insured was at the time of loss;

(c) if required give a complete inventory of undamaged property and showing in detail quantities, cost, actual cash value;

(d) if required and if practicable, produce books of account, warehouse receipts and stock lists, and furnish invoices and other vouchers verified by statutory declaration, and furnish a copy of the written portion of any other contract.

(2) The evidence furnished under clauses (c) and (d) of subparagraph (1) of this condition shall not be considered proofs of loss within the meaning of conditions 12 and 13.

**Fraud**

7. Any fraud or wilfully false statement in a statutory declaration in relation to any of the above particulars shall vitiate the claim of the person making the declaration.

**Who may give notice and proof**

8. Notice of loss may be given, and proof of loss may be made, by the agent of the insured named in the contract in case of absence or inability of the insured to give the notice or make the proof, and absence or inability being satisfactorily accounted for, or in the like case, or if the insured refuses to do so, by a person to whom any part of the insurance money is payable.

**Salvage**

9. (1) The insured, in the event of any loss or damage to any property insured under the contract, shall take all reasonable steps to prevent further damage to any such property so damaged and to prevent damage to other property insured hereunder including, if necessary, its removal to prevent damage or further damage thereto.

(2) The insurer shall contribute pro rata towards any reasonable and proper expenses in connection with steps taken by the insured and required under subparagraph (1) of this condition according to the respective interests of the parties.

**Entry, control, abandonment**

10. After any loss or damage to insured property, the insurer shall have an immediate right of access and entry by accredited agents sufficient to enable them to survey and examine the property, and to make an estimate of the loss or damage, and, after the insured has secured the property, a further right of access and entry sufficient to enable them to make appraisement or particular estimate of the loss or damage, but the insurer shall not be entitled to the control or possession of the insured property, and without the consent of the insurer there can be no abandonment to it of insured property.

**Appraisal**

11. In the event of disagreement as to the value of the property insured, the property saved, or the amount of the loss, those questions shall be determined by appraisal as provided under the Insurance Act before there can be any recovery under this contract, whether the right to recover on the contract is disputed or not, and independently of all other questions; but there shall be no right to an appraisal until a specific demand therefor is made in writing and until after proof of loss has been delivered.

**When loss payable**

12. The loss shall be payable within 60 days after completion of the proof of loss, unless the contract provides for a shorter period.

**Replacement**

13. (1) The insurer, instead of making payment, may repair, rebuild, or replace the property damaged or lost, giving written notice of its intention so to do within 30 days after receipt of the proofs of loss.

(2) In that event the insurer shall commence to so repair, rebuild, or replace the property within 45 days after receipt of the proofs of loss, and shall thereafter proceed with all due diligence to the completion thereof.

**Action**

14. Every action or proceeding against the insurer for the recovery of any claim under or by virtue of this contract shall be absolutely barred unless commenced within one year next after the loss or damage occurs.

**Notice**

15. (1) Any written notice to the insurer may be delivered at, or sent by registered mail to, the chief agency or head office of the insurer in the Province.

(2) Written notice may be given to the insured named in this contract by letter personally delivered to him or by registered mail addressed to him at his latest post office address as notified to the insurer, and in this condition the expression "registered" means registered in or outside Canada.

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